

REMARKS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 3-10, 12-15, 18-33 and 37-38 are presently active in this case. The present Amendment amends Claims 3, 5-6, 9, 12-15, 18, 20, 22-31, and 33; and adds new Claims 37-38 without introducing any new matter, and cancels Claims 35-36 without prejudice or disclaimer. Claims 1-2, 11, 16-17 and 34 were previously cancelled without prejudice or disclaimer.

The outstanding Office Action rejected Claim 15 under 35 U.S.C. §112, second paragraph, as indefinite. Claims 3-10, 12-15, 18-33, 35, and 36 were rejected under 35 U.S.C. §103(a) as unpatentable over Olewicz et al. (U.S. Patent No. 6,973,437, herein "Olewicz") in view of Smith et al. (U.S. Patent No. 5,826,043, herein "Smith"). Claims 3-10, 12-15, 18-33, 35, and 36 were rejected under 35 U.S.C. §102(e) as anticipated by Olewicz. Claim 18 was rejected under 35 U.S.C. §103(a) as unpatentable over the combination of Olewicz, Smith in view of Todd (U.S. Patent No. 6,072,393, herein "Todd"). Claim 19 was rejected under 35 U.S.C. §103(a) as unpatentable over the combination of Olewicz, Smith in view of Duphorne (U.S. Patent No. 6,212,265, herein "Duphorne").

First, Applicant wishes to thank Examiner Fischer for the courtesy of an interview granted to Applicant's representative on May 8, 2006, at which time the outstanding issues in this case were discussed. A non-operating sample of the portable table top terminal and the terminal receptacle of the service management system, and arguments similar to the ones developed hereinafter were presented, and the Examiner indicated that in light of the arguments, he would reconsider the outstanding grounds for rejection upon formal submission of a response.

To vary the scope of protection recited in the claims, new Claims 37-38 are added. New Claim 37 depends upon Claim 3 and recites "the portable table top terminal is put into operation mode for ordering, as soon as the portable table top terminal is received by the terminal receptacle."¹ New Claim 38 depends upon Claim 3 and recites "the identification number identifies a table."² Since the new claims find non-limiting support in Applicant's disclosure as originally filed, they are not believed to raise any questions on new matter.³

In response to the rejection of Claim 15 under 35 U.S.C. §112, second paragraph, Claim 15 is amended to recite "and receives the portable table top terminal thereon." It is thereby believed that there is no outstanding issues on antecedent basis regarding the portable table top terminal, and therefore, Applicant respectfully requests reconsideration of the rejection under 35 U.S.C. §112, second paragraph.

In addition, Claims 3, 5-6, 9, 12-15, 18, 20, 22-31, and 33 are also amended to change the wording "configured to perform" to "that performs," as suggested by Examiner Fischer during the May 8, 2006 interview. Since these changes are only formal in nature, they are not believed to raise a question of new matter.

Independent Claim 3 is amended to recite features regarding *the portable table top terminal including a number reading part*, and that the portable table top terminal reads the identification number from the terminal receptacle, and processes a customer's order on the basis of the identification number. In addition, Claim 3 is amended to recite that "the control unit manages the occupancy of the at least one customer location based on the identification number." These features are also supported by Applicant's disclosure as originally filed, for example in Figure 3, at page 12, lines 8-12, page 18, lines 17-30, page 19, lines 24-28, page 22, lines 18-20 and 27-30. In particular page 18, lines 19-23 explain that "the customers'

¹ Finds non-limiting support in Applicant's Specification as originally filed, for example at page 27, lines 8-15.

² Idem at page 16, lines 16-20 and lines 24-25.

³ See MPEP §2163.06 stating that "information contained in any one of the specification, claims or drawings of the application as filed may be added to any other part of the application without introducing new matter."

order is processed on the basis of the identification code. The employees can always check positions of vacant tables on the guide display 18, so that they can guide customers to usable tables.” Dependent Claims 34-35, that recite similar features, are cancelled.

In light of the amendments to independent Claim 3, Applicant respectfully traverses the rejection of Claims 3-10, 12-15, 18-33, 35, and 36 under 35 U.S.C. §102(e) over Olewicz, as next discussed.

Briefly summarizing, Applicant’s invention, as recited in amended independent Claim 3, is directed to a service managing system, including, *inter alia*: a portable table top terminal including a number reading part, that enables customers to view menus and to order a desired dish; a control unit, and a terminal receptacle including an identification number provided at customer locations, the terminal receptacle receives the portable table top terminal thereon, the portable table top terminal ***reads the identification number*** when the portable table top terminal is placed onto the terminal receptacle, wherein the portable table top terminal processes a customer’s order on the basis of the identification number, and the control unit ***manages the occupancy of the customer locations based on the identification number***.

As explained in non-limiting embodiments in Applicant’s specification, the automated service system of Claim 3 allows reduced manpower of a service, such as a restaurant, and improved service quality to customers.⁴ For example, as explained in Applicant’s specification as a non limiting example at page 18, lines 13-23, when the table top terminal is placed onto a receptacle, wherein the receptacle located at a particular customer table or counter, it is possible for the system to identify ***a particular table*** or counter ***position where the ordering terminal is located*** by the use of the identification code of the terminal receptacle, to

⁴ See in Applicant’s Specification, for example at page 5, lines 10-13.

identify the customer and his table.⁵ Therefore, when an order is given by the ordering terminals (i.e., a portable table top terminal or a counter terminal), it is *not required to correspond to a predetermined table or counter locations* on a one-to-one basis, so that the terminals can be freely operated and moved to any tables or counter position. Applicant's specification also explains that "[t]he employees [of the restaurant] can always check positions of vacant tables on the guide display 18, so that they can guide customers to usable tables."⁶

Turning now to the applied references, Olewicz describes a computer system for restaurants that includes a central server and a series of table units 12 and staff units. A customer request at the restaurant using the Olewicz system is entered through the table units 12.⁷ Furthermore, in Olewicz, a hostess, located at the entrance at a hostess stand,⁸ operates a hostess computer 53 to assign customers to their tables.⁹ Olewicz further explains that the hostess computer communicates with the central server, located in a back room or office area, while "the series of table units 12 ... are mounted at each table T (FIG. 1) or at a booth or along a bar area B."¹⁰ In addition, Olewicz's table units 12 can be composed of a base unit 34 mounted to a mounting plate 32 and communications unit 26,¹¹ and "the base unit can be easily reached by any customer sitting around the table or booth."¹²

Accordingly, Olewicz fails to teach or suggest that the portable table top terminal includes a number reading part that reads an identification number of the terminal receptacle, as recited in amended, independent Claim 3. Since Olewicz's table units 12 are always associated with the table itself, Olewicz does also not need such a feature. Therefore, Olewicz is also silent on the portable table top terminal that processes a customer's order on the basis

⁵ Idem at page 12, lines 8-12, and page 18, lines 13-23.

⁶ See in Applicant's Specification at page 18, lines 21-23

⁷ See Olewicz in the Abstract.

⁸ See Olewicz at column 5, lines 40-46.

⁹ See Olewicz at column 10, lines 44-63.

¹⁰ See Olewicz at column 5, lines 20-29, and in Figures 1 and 2.

¹¹ See Olewicz at column 6, lines 51-64 and in Figures 4A-C.

¹² See Olewicz at column 7, lines 4-5.

of the identification number. The outstanding Office Action rejects a similar feature of the dependent claims without pointing out to a passage in Olewicz that describes such a feature.¹³

In addition, Olewicz fails to teach or suggest that the control unit manages the occupancy of the at least one customer location based on the identification number, as further recited in amended independent Claim 3. Olewicz clearly describes that a hostess communication unit 53 at the entrance of the restaurant displays the graphical representation of the restaurant layout showing which tables are clean and ready.¹⁴ In Olewicz' Figure 7A, step 108 it can be seen that the "hostess seats customer and inputs the fact that the customer is seated into the hostess unit." In addition, Olewicz explains that "the hostess will seat the customer and enter the fact that the table is busy or that a customer has been seated."¹⁵

Therefore, a hostess that operates a communication unit at the entrance of the restaurant, to enter that a table is busy, as taught by Olewicz, *is not* control unit that manages the occupancy of the at least one customer location based on the identification number, as recited in Applicant's amended independent Claim 3. Since Olewicz' base units 34 at the tables do not register and identify the presence or absence of the communication units 26, and also does not read any identification information, the feature regarding managing the occupancy by the control unit cannot be inherently taught or suggested by Olewicz.

The reference Smith, relied upon by the outstanding Office Action to form a 35 U.S.C. §103(a) rejection of Claims 3-10, 12-15, 18-33, and 35-36, does not remedy the deficiencies of Olewicz, as next discussed.

Smith describes a docking station 120 including configuration information stored in a non-volatile memory 260, that is read by a notebook computer 110, so that the notebook can verify whether or not the notebook is compatible with the software running on the docking station 120. However, Smith fails to teach or suggest that the portable table top terminal

¹³ See the outstanding Office Action from page 3, line 24, to page 4, line 6.

¹⁴ See Olewicz at column 10, lines 44-50.

¹⁵ See Olewicz at column 12, lines 13-15.

processes a customer's order on the basis of the identification number (of the terminal receptacle), and also fails to teach or suggest that a control unit manages the occupancy of the at least one customer location based on the identification number, as recited in amended independent Claim 3. As a fact, Smith is entirely silent on these features.

In addition, in Smith, the notebook computer 110 connects to the docking station 120, and the software running on the notebook computer 110 evaluated the identification information in the memory 260 of the docket station 120.¹⁶ The outstanding Office Action states that “[s]uch a modification would have allowed the identification of table stations which might ultimately provide for the identification of patrons as discussed in Kurland (U.S. 4,547,851). Moreover, Smith would have allowed different devices to be used at different customer locations so that if one of the computer devices was broken, it could be more easily replaced.”¹⁷ However, the outstanding Office Action fails to give any motivation to combine from the references *themselves*, and seems to use improper hindsight by rejecting Applicant's claims by constructing a solution based on the teachings of Applicant's claims.

See *In re Lowry*, 32 F.3d 1579, 1583, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994) to recite “[t]o establish a prima facie case of obviousness, the burden of establishing the absence of a novel, nonobvious functional relationship rested with the Patent and Trademark Office,” and “[t]he claimed invention involved an organization of information and its interrelationships that the prior invention neither disclosed nor suggested.” See also *Monarch Knitting Mach. Corp. v. Sulzer Morat GmbH*, 139 F.3d 877, 880, 45 USPQ2d 1977, 1981 (Fed. Cir. 1998) “[d]efining the problem in terms of its solution reveals improper hindsight in the selection of the prior art relevant to obviousness.” In addition, the MPEP §2143.01

¹⁶ See Smith at column 4, lines 37-63, and in corresponding Figure 2.

¹⁷ See the outstanding Office Action from page 4, line 20, to page 5, line 3.

clearly states that the position that Olewicz *could* be modified to arrive at the claimed service managing system is insufficient to establish a prima facie case of obviousness.¹⁸

The reference Kurland (U.S. Patent No. 4,547,851) mentioned in the outstanding Office Action also fails to remedy the deficiencies of Olewicz and Smith, even in any proper combination. Kurland describes an interactive restaurant communication system 10, where food selection and entertainment can be shown on one common monitor 56.¹⁹ Terminals 12, 14, 16, 18 and 20 are installed at individual tables, and are used to enter orders.²⁰

Accordingly, Kurland also fails to teach or suggest that a portable table top terminal processes a customer's order on the basis of the identification number, and also fails to teach or suggest that a control unit manages the occupancy of the at least one customer location based on the identification number, as recited in amended independent Claim 3.

Applicant also respectfully traverses the obviousness-type rejection based on Olewicz and Smith because there is insufficient evidence for a motivation to modify Olewicz' integrated communications system for restaurants by incorporating Smith's identification number of a docking station to connect notebooks thereto,²¹ for the following reasons.²²

The outstanding Office Action states that the proposed modification would have been obvious "to include Smith's idea of identifying the docking station with the computer."²³ The record, however, fails to provide the required *evidence* of a motivation for a person of

¹⁸ See MPEP §2143.01 stating that the "fact that references can be combined or modified is not sufficient to establish *prima facie* obviousness"; see also same section stating "[a]lthough a prior art device 'may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so,'" (citation omitted).

¹⁹ See Kurland in the Abstract, and in Figure 7.

²⁰ See Kurland at column 2, lines 57-68.

²¹ See Smith in the Abstract.

²² See MPEP 2143.01 stating "[o]bviousness can only be established by combining or modifying the teaching of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art," (citations omitted). See also MPEP 2144.08 III stating that "[e]xplicit findings on motivation or suggestion to select the claimed invention should also be articulated in order to support a 35 U.S.C. 103 ground of rejection. . . . Conclusory statements of similarity or motivation, without any articulated rational or evidentiary support, do not constitute sufficient factual findings."

²³ See the outstanding Office Action at page 4, lines 21-22.

ordinary skill in the art to perform such modification. Assuming that Smith provides a reason for using an identification information of a docking station, to determine whether a docketed notebook is compatible to software installed on the docking station,²⁴ Smith fails to suggest why a person of ordinary skill in the art would be motivated to incorporate such a feature in a table unit 12 permanently mounted to a table, or located near an assigned table, for a restaurant ordering system,²⁵ as describes in Olewicz. In particular, Smith uses configuration and identification information in order to verify compatibility of installed software and to assign overall system resources.²⁶ Smith, however, does not suggest that configuration and identification information would work in a table unit 12 installed at the tables, having preprogrammed functions #1-#14.²⁷ Smith does not state that table units installed at the tables need "to assign the overall system resources when the notebook computer 110 is docked in the docking station 120."²⁸

In addition, Olewicz is not concerned with software compatibility and configuration of a notebook docketed to a docking station. All of Olewicz' system elements have defined functions. Instead, Olewicz is concerned with communicating orders from the table units 12 to the central server unit 11.²⁹

Olewicz and Smith, therefore, do not provide the motivation to perform the proposed modification of Olewicz. In other words, an attempt to bring in the isolated teaching of Smith's configuration and identification information into Olewicz' table units 12 would amount to improperly picking and choosing features from different references without regard to the teachings of the references as a whole.³⁰ While the required evidence of motivation to

²⁴ See Smith in the Abstract, lines 8-11, and at column 1, lines 44-50.

²⁵ See Olewicz in the Abstract, and at column 6, lines 51-54.

²⁶ See Smith at column 4, lines 44-53.

²⁷ See Olewicz at column 7, lines 30-63.

²⁸ See Smith at column 4, line

²⁹ See Olewicz at column 5, lines 20-29 and in corresponding Figure 1.

³⁰ See In re Ehrreich 590 F2d 902, 200 USPQ 504 (CCPA, 1979) (stating that patentability must be addressed "in terms of what would have been obvious to one of ordinary skill in the art at the time the invention was made

combine need not come from the applied references themselves, the evidence must come from *somewhere* within the record.³¹ In this case, the record fails to support the proposed modification of Olewicz.

Applicants have also considered the Todd and Duphorne, and submit these references do not cure the deficiencies of the Olewicz and/or Smith.

The reference Todd is concerned with an anti-theft alarm system for a portable device such as a laptop computer.³² Todd's anti-theft alarm comprises three main components: a uniquely coded tag 12 for attachment to the bottom of the laptop computer 11, a pad 14 upon which the device is placed, for sensing the tag 12, and an electrically powered control module.³³ However, Todd is silent on the any feature regarding the number reading part, the identification number of the terminal receptacle, and the management of the occupancy, of amended independent Claim 3.

The reference Duphorne describes a public telephone network, wherein a local telephone company can send an email notification signal in a format compatible with caller ID protocols to an email notification device, to thereby eliminate pager services.³⁴ However, Duphorne is silent on any feature regarding the number reading part, the identification number of the terminal receptacle, and the management of the occupancy. In addition, Duphorne is clearly directed to a particular public telephone service system and notification of such phone calls, and therefore fails to teach or suggest electronic mails are exchanged between a plurality of table top terminals, as recited in dependent Claim 19.

in view of the sum of all the relevant teachings in the art, not in view of first one and then another of the isolated teachings in the art," and that one "must consider the entirety of the disclosure made by the references, and avoid combining them indiscriminately.")

³¹ See In re Lee, 277 F.3d 1338, 1343-4, 61 USPQ2d 1430 (Fed. Cir. 2002) ("The factual inquiry whether to combine references ... must be based on objective evidence of record. ... [The] factual question of motivation ... cannot be resolved on subjective belief and unknown authority. ... Thus, the Board must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion").

³² See Todd in the Abstract.

³³ See Todd in the Abstract, and in Figure 1.

³⁴ See Duphorne in the Abstract.

Duphorne also states that “the email notification device 20 is used by restaurants to receive food orders sent by a customer via email and received by the restaurant over the telephone line,” and further explains that “food orders are transmitted to the restaurant over *existing telephone lines*”³⁵ (emphasis added), and thereby teaches away from the teachings of Olecwicz, since Olecwicz clearly uses local communications to communicate between the system elements, or a cell phone network.³⁶ Applicant believes that the combination of Duphorne with Olecwicz is improper, since such combination is clearly against established precedence. In this regard, “[a] reference may be said to teach away when a person of ordinary skill in the art, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.” *In re Gurley*, 27 F.3d 551, 553, 31 USPQ2d 1130, 1131 (Fed. Cir. 1994). In approaching the question of obviousness, it is improper to “consider[s] references in less than their entireties, i.e., in disregarding disclosures in references that diverge from and teach away from invention at hand.” *W. L. Gore and Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1540, 220 USPQ 303, 311 (Fed. Cir. 1983).

Because none of the cited references disclose or suggest all the elements of amended, independent Claim 3, Applicant submits the inventions defined by Claim 3, and all claims depending therefrom, are not anticipated and are not rendered obvious by the cited references.³⁷

Consequently, in view of the present Amendment, no further issues are believed to be outstanding in the present application, and the present application is believed to be in

³⁵ See Duphorne at column 9, lines 39-46.

³⁶ See Olecwicz at column 6, lines 22-30.

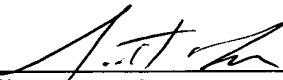
³⁷ See MPEP §2142 “...the prior art reference (or references when combined) must teach or suggest **all** the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).”

condition for formal Allowance. A Notice of Allowance for Claims 3-10, 12-15, 18-33 and 37-38 is earnestly solicited.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact Applicant's undersigned representative at the below listed telephone number.

Respectfully submitted,

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